

# GENERAL TERMS AND CONDITIONS PURCHASE ORDER



**1 Acceptance of Entire Agreement:** These Purchase Order General Terms and Conditions (hereinafter defined as the "GTC"), including the terms and conditions on the face of the Purchase Order delivered by Buyer and all proposals, designs, plans and other documents specified by Buyer in such Purchase Order (hereinafter collectively defined as the "Contract") shall govern all purchases made by the Buyer from the Seller (as these parties are defined or otherwise identified on the Purchase Order) of goods, products, and other equipment, including any software imbedded therein ("Products") and/or services ("Services") as such are more further described in the Contract. (Buyer and Seller are together the "Parties," and each a "Party" hereto.)

Unless governed by a separate and specific agreement mutually agreed to in writing, executed by an authorized representative of both Parties, this Contract shall constitute the complete and final written agreement between Buyer and Seller and supersedes all other agreements and understandings between the Parties regarding the supply of Products and the performance of Services pursuant to the Contract. No other terms, whether consistent or conflicting, are a part of the Contract, even if such terms are provided on Seller's forms.

Seller's terms and conditions, whether included by reference in this Contract or in any other document delivered or issued by Seller, shall not be binding on the Buyer unless Buyer expressly agrees in writing and which acceptance shall be clearly referenced on the face of the Purchase Order.

The Parties acknowledge that no amendments may be made to the Contract, including the GTC, unless agreed to between the Parties and confirmed to such effect in writing by the Parties.

Documents designated by Buyer as part of the Contract in accordance with this Section 1, including supplemental terms and conditions, if any, are incorporated by reference the same as if set out in full herein and, in the event of a conflict between the GTC and any other documents or supplemental terms and conditions, the GTC shall have precedence, unless Buyer expressly agrees in writing that such other documents or supplemental terms and conditions shall have precedence over the GTC.

**2 Price:** The Products supplied or to be supplied and the Services performed or to be performed pursuant to this Contract shall not be invoiced at a higher price than set out in the Purchase Order without the express prior written consent of Buyer. The price set out in the Purchase Order is all inclusive and, subject to this Section 2, Seller is not entitled to any additional payment unless expressly set out and agreed to in writing by Buyer. No charges will be allowed for packing, crating, freight surcharges, expedited delivery or cartage unless expressly stated in the Contract. The charges and taxes payable by Buyer in accordance with this Contract must be itemized as separate line items, at Seller's actual cost on each invoice. Any cash discounts will be calculated from the date Buyer approves an invoice, in Buyer's sole judgment, or from the date Products are received or Services are performed, with all relevant documentation required to be delivered with the delivery of the Products or rendering of the Services, pursuant to this Contract, whichever is later.

For greater certainty, the price set out in the Purchase Order includes all taxes and all fees, royalties, commissions and other accessory disbursements, if any, for the Products or Services being provided, and Seller shall be responsible for any such taxes, fees, royalties, commissions and other accessory disbursements, other than applicable

sales taxes, which shall be paid by Buyer. If Buyer is required to pay any taxes, fees, royalties, commissions and other accessory disbursements for which Seller is responsible hereunder, Buyer shall be entitled to deduct such amounts from any amount payable to Seller under the Contract. Seller shall, at Buyer's request, cooperate with Buyer and the appropriate tax authorities in obtaining any tax refunds for the account of Buyer.

**3 Packing, Shipping and Routing:** All Products to be delivered to Buyer shall be packed and packaged in accordance with applicable laws and with instructions or specifications in this Contract or referred to in drawings or specifications for the Products. In the absence of any such instructions or specifications on packing and packaging, Seller shall (i) comply with the best commercial practice for shipment adequate for safe arrival of the Products at Buyer's specified destination, storage against weather and the mode of selected transportation, (ii) comply with carrier regulations and (iii) secure the lowest possible transportation rates (including rail, motor truck, express and parcel post, or in accordance with such special shipping instructions as issued by Buyer). Where Buyer is responsible for transportation, any extra transportation cost resulting from failure to comply with this Section shall be charged to Seller's account.

Buyer's Purchase Order number can be found on the face of the Purchase Order. It must be plainly marked on all shipments, packing slips, invoices, and any other documents related to this Contract.

A packing list must be included with each package and show the Purchase Order number, release number, and an itemized description of contents, including the Purchase Order line number and stock code number where applicable. Special emphasis on compliance with this section is to be given to direct-from-manufacturer shipments.

All shipments must be adequately insured by Seller.

If shipment is by railroad carload, Seller must provide the car initials, numbers, routing, and date of shipment to Buyer.

Cars must be loaded only to carload minimums and in accordance with applicable laws or Seller will be charged with any excess freight incurred by Buyer due to Seller's failure to so load.

Each car must be clearly and accurately carded with the name of Seller, the quantity and description of each item, size and grade of Products, and the Purchase Order number.

Products arriving without proper notices will be held without acceptance until the required information is received. All costs incidental thereto will be charged to Seller.

**4 Warranties, Guarantees, Inspection, and Right of Rejection:** Products Warranty: Seller hereby guarantees that all Products shall (i) be produced in accordance with the terms of this Contract and fit for the purposes intended; (ii) comply with all then existing applicable foreign and federal, state, provincial, municipal and local laws, ordinances and governmental rules, regulations and requirements; (iii) conform strictly to the specifications, drawings, samples, or other descriptions furnished; and (iv) be new, of merchantable quality, and free from all defects whether patent or latent; and that the workmanship of the Products is of the highest standards and, where the materials to be used are not specified, such materials used meet the highest standard of quality.

Services Warranty: Seller hereby guarantees that (i) all Services shall comply with all then existing applicable foreign and federal, state, provincial, municipal and local laws, ordinances and governmental rules, regulations and requirements; (ii) Seller shall perform its obligations for the benefit of Buyer in a professional, workmanlike, and timely manner, consistent with industry standards in effect with respect to suppliers providing similar Services in the geographic location where the Services are being performed and in compliance with any scope of work or similar document included in the Contract; and (iii) in carrying out its obligations under this Contract, Seller shall exercise the degree of care, skill and diligence exercised by prudent and experienced suppliers that provide similar Services.

All Products will be subject to inspection and approval by Buyer. Final inspection will be made after Products are delivered to Buyer's specified destination. If Products are rejected, they will be held for disposition at Seller's risk and expense and any payment on account thereof shall be promptly refunded by Seller. Any inspection or approval performed at Seller's location or elsewhere during or after manufacture, whether or not such inspection or approval be provided for by the terms of this Contract, shall be provisional only and shall not constitute final acceptance or be construed as a waiver of the foregoing right of inspection and approval or rejection after receipt of Products by Buyer at Buyer's location. Seller may be given a reasonable opportunity to correct defects after the receipt of such Products by Buyer, but only in the case correction can be made within a reasonable time. Seller guarantees that any Products, Services, or any part thereof found defective or that do not meet any of these warranties within one (1) year after such Products or part thereof are put into use by Buyer, or within one (1) year after such Services or part thereof are performed by Seller, will be promptly repaired, replaced or re-performed without charge. If such repair, replacement or re-performance is insufficient in Buyer's sole discretion, the full original cost of such Product or Service shall be refunded to Buyer. Such remedies are without prejudice to any other remedy of Buyer and shall also be warranted for an additional one (1) year after the date the repair, replacement or re-performance is completed, including delivery and installation where applicable. Buyer shall also have the right to have any Service provider removed and replaced at any time for any reason.

**5 Delivery Schedule:** Seller shall furnish sufficient labor and management forces, plant, and equipment and shall work such hours (including night shift, overtime, weekend and holiday work, without additional cost to Buyer) as may be required to ensure timely delivery of the Products and performance of the Services to Buyer.

Regardless of delivery or performance in installments, Seller's obligation is not severable. Buyer will not accept shipments sent cash on delivery (C.O.D.) without Buyer's prior express written consent and will return them at Seller's risk.

In the event Seller reasonably believes that the delivery of Products or performance of Services pursuant to this Contract may be delayed, Seller shall immediately inform Buyer of any such delay and shall submit recovery plans to meet Buyer's requirements. Notwithstanding the foregoing, Seller shall not be relieved of its liability as a result of the late delivery of such Products or late performance of such Services, unless due to a force majeure event per Section 15.

**6 Title and Risk of Loss:** Title and risk of loss of all Products shall pass to Buyer upon Buyer's physical receipt and acceptance of the Products together with all required documents. If Buyer makes progress payments, title to the Products shall be transferred to Buyer in the

corresponding proportion of the cumulative payments to the final Contract price.

**7 Changes to Quantity or Scope:** The quantity of Products delivered or the scope of Service provided by Seller pursuant to this Contract shall not exceed nor be less than the quantity of Products or scope of Service specified in the Contract, without Buyer's prior written permission.

The Buyer reserves the right at any time to change, by written notice to the Seller or through a modified or revised Purchase Order, any of the following: specifications (including scope of Services to be provided), drawings and data incorporated in this Contract where the Products to be furnished are to be specially manufactured for the Buyer, quantity desired, methods of shipment or requirements for packaging, place of delivery of the Products or performance of the Services, time of delivery of the Products or performance of the Services, or any other matters affecting this Contract.

If any changes by Buyer cause an increase or decrease in the cost of, or the delivery schedule or performance schedule for, the Products or the Services covered by this Contract, Seller shall advise the Buyer, in writing, within ten (10) days of receipt of such change request from Buyer, of any equitable adjustment in the invoice, delivery or performance schedule, or both, that the Seller intends to make. Any claims by Seller for adjustment under this clause following such ten (10) day period shall be deemed waived.

**8 Payment Terms:** Itemized invoices must include the Purchase Order Number and the corresponding Purchase Order item number for the Products in question. Where Products are delivered the invoice shall also indicate the manufacturer and part number; the date and method of shipment; terms of shipment (for example F.O.B. point of shipment, freight allowed; or F.O.B. destination; or other F.O.B. or Incoterm designation) and if no shipment terms are designated they shall be assigned by Buyer; whether the shipment moved prepaid or collect; car initials and numbers and routing if shipment was made by railroad; itemized quantities, descriptions and corresponding prices of the Products shipped; any discount terms; the Product's stock number; and a copy of the signed proof of delivery to verify receipt of the Products by Buyer. Where Services are performed, the invoice shall also include a reasonably detailed description of the Services provided. Vague descriptions that do not accurately and fairly describe the Services actually provided are not acceptable. Under no circumstances may an invoice mischaracterize the Services performed. Statements of Buyer's account should be mailed to Buyer on a monthly basis.

The price and payment terms on all invoices shall be in accordance with the price and payment terms specified in this Contract and specifically on the face of the Purchase Order, and this Contract shall govern over any terms contained in any invoice. Payments will be made subject to all applicable tax withholdings.

Where Products are purchased by the Buyer, only Products received by Buyer in apparent good condition and containing the documentation required pursuant to this Contract may be invoiced.

Payment of invoices does not constitute acceptance of the applicable Products or Services (and payment thereof is without prejudice to any and all claims the Buyer may have against the Seller under this Contract).

If Buyer and Seller agree to payment terms other than Net 45 Days, such terms shall be clearly stated on the Purchase Order.

**9 Audit:** Buyer reserves the right to audit Seller's records and facilities to assure compliance with the terms of this Contract and any applicable laws or regulations. Seller shall make available all data reasonably requested by Buyer. Seller shall ensure a comparable right to audit with any subcontractors.

**10 Intellectual Property:** "Intellectual Property" shall mean any and all information, knowledge or thought processes protected by a patent, trademark, copyright, licensing agreement, or any other exclusive right to processes, knowledge or information protected by state, federal or any international law. All Intellectual Property rights, including copyright, and any trade secrets or other unregistered intellectual property rights in the Products delivered or Services performed will become the property of the Buyer upon delivery, subject only to full and final payment of the undisputed amounts owed in accordance with the terms of this Contract. Notwithstanding the foregoing, this shall not extend to include any Pre-Existing IP as defined below.

To the extent that the performance of the obligations by Seller under this Contract requires the use of or rely on: (i) concepts, know-how, ideas, knowledge, methodologies, pro forma documents, templates and techniques developed by Seller other than the Products or other deliverables relating to the performance of the Services; or (ii) the Intellectual Property rights of the Seller in products, equipment, software, and documentation used by the Seller to perform its obligations hereunder (collectively, the "Pre-Existing IP"), then as part of the consideration payable under this Contract to the Seller, Seller hereby provides Buyer with a royalty-free, perpetual, non-exclusive, assignable license to use Seller's Pre-Existing IP for the purpose of Buyer's use, amendment, improvement, upgrade or maintenance of the Products or of the deliverable relating to the performance of the Services.

**11 Intellectual Property Indemnity:** Seller shall notify Buyer if Seller has or acquires knowledge of any Intellectual Property rights under which a suit for alleged infringement thereof can reasonably be brought in connection with the Services rendered or the Products delivered pursuant to this Contract.

Seller shall defend, on behalf of Buyer, indemnify and hold Buyer harmless, at Seller's expense, from and against any third party claims threatened or brought at law or in equity arising out of or related to the Products or Services which may be brought against Buyer, its affiliates, successors and assigns, at any time for infringement of any third party Intellectual Property rights. Seller shall pay the costs and expenses of any such action or suit, including reasonable compensation and expenses of experts and legal counsel of Buyer's choice and selection, and Seller shall also pay and save Buyer free and harmless from damages or other sums awarded or assessed in any such action or suit. No compromise or settlement directly or indirectly affecting Buyer's operations may be agreed to without Buyer's consent, which will not be unreasonably withheld.

If the Products, or any component part furnished hereunder, are held to infringe, or their use is enjoined, Seller shall, promptly at Seller's expense: procure for Buyer and its successors and assigns, the right to continue using the Products; replace them with a substantially equivalent non-infringing product; or modify them so they become non-infringing with substantially equivalent performance. Seller's obligations must be performed in such a manner so as not to interfere with Buyer's operations as determined in Buyer's sole discretion. Should Seller fail to comply with the above within the time period set out by Buyer, Buyer reserves its rights at law or, at its option, to return the infringing Products to Seller at Seller's expense, in which case Seller shall refund

the purchase price to Buyer within ten (10) days from the delivery of the infringing Products.

**12 Indemnity and Limitation of Liability:** To the fullest extent permitted by law, Seller shall indemnify, defend and hold harmless Buyer, its subsidiaries, affiliates and joint ventures (each an "Indemnitee"), from and against all claims, demands, damages, liabilities, losses and expenses (including attorney and paralegal fees and court costs and including penalties and interest) incurred or suffered by any Indemnitee and arising out of or resulting from, directly or indirectly, (i) the Products delivered or Services performed pursuant to this Contract, (ii) any act or omission of Seller in the performance of its obligations under this Contract, (iii) a breach of Seller's representations or warranties, or (iv) a breach by Seller of any of its obligations under this Contract, including but not limited to bodily injury, sickness, disease or death, or damage to or destruction of tangible property (including loss of use resulting there from). The foregoing indemnity shall be in addition to any other indemnity obligations of Seller set forth in this Contract. Any insurance recoveries or policies shall not limit any obligation of Seller hereunder.

Both Party's liability to the other Party arising out of this Contract shall be limited to direct damages and in no event shall either Party be liable to the other Party for punitive damages, loss of profit, loss of goodwill or other special, indirect or consequential damages suffered under this Contract whether in contract or tort, even if advised of the possibility of such damages.

**13 Property Furnished to Seller by Buyer:** All dies, molds, patterns, jigs, fixtures, and any other property of any type which Buyer has furnished to Seller (the "Property") for use in the performance of this Contract, shall remain Buyer's property and shall be subject to removal upon Buyer's request. Property shall be exclusively used for Buyer's Products and Services under this Contract, shall be held by the Seller at its own risk, and must be adequately insured by Seller at all times at its expense while in Seller's custody or control. Seller must name Buyer as an additional insured and as loss payee under such insurance policies. All insurance policies obtained by Seller that insures any Property described herein must be written by insurance companies which may be subject to approval by Buyer. Seller will promptly furnish certificates of insurance upon Buyer's request.

**14 Business Ethics; Anti-Corruption; Fair Treatment:** Seller covenants and agrees that neither Seller nor any of Seller's subcontractors shall pay any undisclosed or improper commission or fees, rebates, gratuity or other remuneration to Buyer, Buyer's affiliates, or to any of their respective employees, officers, directors and agents, and that neither Seller nor any of Seller's subcontractors shall pay any undisclosed or improper commission or fees, rebates, gratuity or other remuneration to one another or to the employees, officers, directors or agents of the other in connection with this Contract.

In accordance with the United States' Foreign Corrupt Practices Act ("FCPA"), and all other applicable anti-corruption laws, Seller represents and warrants the following: (i) Seller will not make and has not made directly or indirectly any payments or given anything of value to any government official, employee of any government agency or department, employee of any state-owned or state-controlled entity, political party, or party candidate, or anyone else in connection with or in any way related to the business or operations that is the subject of the Contract in violation of the FCPA or any other applicable anti-corruption law; (ii) Seller will abide by the FCPA and all other applicable anti-corruption laws, both foreign and domestic and governing both public official and commercial anti-bribery; (iii) Seller will not utilize any

undisclosed agents, subagents, subcontractors, or other third parties in connection with performance of the Contract and will not authorize any agents, subagents, subcontractors, or other third parties to violate any applicable anti-corruption law in connection with performance of the Contract; and (iv) Seller will provide reasonable detail in invoices submitted for payment in connection with the Contract.

In accordance with the Code of Conduct for Cliffs' Suppliers, Seller further agrees: (a) to respect the basic human rights of its employees, including to respect the personal dignity, privacy and rights of each individual; to refuse to employ or make anyone work against his or her will; to provide fair remuneration and to comply with the applicable minimum wage and maximum working hours laws, and prohibitions against child labor; to refuse to tolerate discriminatory practices or unacceptable treatment of employees; (b) to take health and safety precautions for its employees, including to control hazards, provide a safe working environment, take the best reasonably possible precautionary measures against accidents and occupational disease, and comply with applicable environmental protection standards and laws; and (c) in regards to its supply chain, to use reasonable efforts to promote among its suppliers compliance with this Code of Conduct; and to comply with the principles of non-discrimination with regard to supplier selection and treatment.

Buyer may terminate this Contract for the Seller's failure to abide by any of these agreements, representations, and warranties.

**15 Force Majeure:** Neither Buyer nor Seller shall be liable to the other for any loss or damage arising out of a delay, or non-performance of any contractual obligation set forth in this Contract caused by acts of God, fire, flood, earthquake, storm, hurricane or other natural disaster, war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockade, embargo, labor dispute, strike, or interruption or failure of electricity or telephone service or other events beyond the reasonable control of either Party which prevents performance of such Party's obligations under this Contract. Both Parties shall be prompt in restoring normal conditions, re-establishing schedules and resuming operations as soon as the interruptions have ceased. In the case of an event of force majeure, the Party claiming the benefit of the event of force majeure shall, within seventy-two (72) hours of the occurrence of such event, give the other Party written notice thereof, and a description of the full particulars of the event and the cause or causes of the event. The notice shall describe with particularity the actions that the Party giving the notice intends to take to resolve the event of force majeure as soon as reasonably possible. In no event shall Seller be entitled to any increase in the price as a result of any event of force majeure.

During the duration of force majeure, each Party shall bear its own costs resulting from the delay. Force majeure shall not include financial distress, insolvency, bankruptcy, or other similar conditions affecting one of the parties and/or its affiliates and/or sub-contractors. Should the affected Party be unable to resume performance within 30 days, the non-affected Party shall be entitled to terminate this Contract by giving a written notice to the other Party confirming its election to terminate this Contract, which termination shall take effect on the date of the delivery of such notice or later on as specified in such notice.

**16 Independent Contractor and Non-Exclusivity:** Seller is an independent contractor, and Seller's employees and any approved subcontractors shall at all times be under Seller's supervision, direction, and control. Seller shall have full power and authority to select the

means, manner, and methods of performing its obligations hereunder without supervision, direction, or control by Buyer. Seller, and Seller's supervisors, may receive instructions from Buyer and Buyer's representative as to the end results to be accomplished, and Seller shall be responsible for directing Seller's employees as to the means, manner, and methods of performing its obligations hereunder. Compliance by Seller or Seller's employees with engineering instructions, safety practices, maintenance instructions, or change orders issued by Buyer or Buyer's representative shall not affect Seller's status as an independent contractor, and shall not relieve Seller of Seller's obligations under this Contract. Seller's employees are not entitled to workers' compensation benefits from Buyer and the Seller is obligated to remit, pay and withhold all applicable state, provincial, local, or federal income or other taxes on any monies earned pursuant to the Contract relationship. Seller shall be solely and exclusively responsible for all federal, state, provincial or local income or other taxes and statutory deductions and withholdings required to be made by Seller in respect of Seller's employees.

This is a non-exclusive relationship and Buyer has the right to purchase similar Products or Services from other vendors.

**17 Insurance:** Seller shall procure and maintain appropriate insurance coverage meeting or exceeding the following requirements, as well as all jurisdictional and legal mandates: (a) Commercial General Liability: Commercial General Liability Insurance, including contractual liability, premises liability, on-going operations liability, completed operations liability, contractors protective liability, personal injury, broad form property damage with minimum limits of \$2,000,000 per occurrence (all currency noted in U.S. dollars). The policy shall be endorsed to include Buyer as an additional insured on a primary and non-contributory basis with respect to any insurance or self-insurance maintained by any of them. Such coverage for additional insured shall be limited to the liability of the additional insured only to the extent caused by the negligent acts or omissions of the Seller. The policy shall allow cross-liability suits and shall be endorsed to include a waiver of subrogation in favor of Buyer. (b) Employer's Liability: Employer's Liability Insurance for accident and occupational disease in an amount not less than \$1,000,000 policy limit per accident and each employee. (c) Workers' Compensation: Workers' Compensation Insurance for the benefit of Seller's employees, as required by the laws of the state, or province in which the work is being performed, and as required by any other similar federal, state, provincial, municipal or local laws applicable to such employee(s), including Employer's Liability insurance coverage. If not otherwise prohibited by law, the policy shall be endorsed to include a waiver of subrogation in favor of Buyer. *These insurance provisions are intended to be a separate and distinct obligation of the Seller. The insurance provisions shall be enforceable and Seller shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work is performed. The obligation of Seller to provide insurance shall not limit in any way the liability or obligations assumed by the Seller. If the total value of the Contract exceeds the limits described above, the limits for each of the individual lines of insurance shall be automatically increased to meet or exceed the total Contract value.*

**18 Compliance with Applicable Laws:** Seller warrants that the Products sold or Services furnished hereunder have been and will be produced and furnished in full and complete compliance with all applicable laws, including but not limited to environmental laws and regulations, any mining, safety and health laws, and requirements that chemical substances furnished hereunder be reported for the U.S. Environmental Protection Agency, Toxic Substances Control Act

inventory or other applicable government agency. Seller will furnish to Buyer, upon Buyer's request, all certificates and forms necessary in Buyer's judgment to certify compliance with all such applicable environmental laws and regulations. For any Services performed at Buyer's location, Seller shall also comply with the Buyer's safety rules. If any of these provisions in this Section are not met, then Buyer shall have the right to terminate this Contract immediately and without penalty.

Seller shall provide a Material Safety Data Sheet ("MSDS"), or other similar document as required by applicable law, to Buyer for Products sold to Buyer hereunder. Where such information is required due to the nature of the Product, a MSDS will be provided prior to such Products being delivered to Buyer's facility.

**19 Governing Law:** This Contract shall be construed, interpreted and governed by the laws of the country, state or province shown on the face of the Purchase Order thereunder as the place to which invoices are to be sent to the Buyer. Any dispute arising under, or in connection with, this Contract will be subject to the exclusive jurisdiction of the courts located in such country, state or province. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.

**20 Liens:** All Products delivered and Services performed under this Contract shall be free of all liens, hypothecs, security interests, rights of others and other charges and encumbrances and, if Buyer requests, a proper release of all liens or satisfactory evidence of freedom from liens will be promptly delivered to Buyer.

**21 Confidentiality and Nondisclosure:** "Confidential Information" shall mean the Contract and any information, action, process, design, idea, concept, experience, knowledge, supporting document (whether in print form or electronic), material, file, electronic file regardless of format, including but not limited to documents suffixed with: .pdf, .tiff, .jpg, .mp3, .wav, .doc, .exe, .wpd, .xls, .ppt, or any other suffix used in the creation of electronic data, recording, business record, business concern, unpublished corporate record, internal memo, e-mail, personnel file, personal information, computer system, website, software application, firewall, login, password, computer code regardless of language, and any and all documents and information, whether written, electronic or verbal, which the Buyer has deemed to be confidential or which any reasonable professional should know to be confidential.

Seller shall protect any and all Confidential Information and other information it receives from the Buyer as though it were its own. Confidential Information shall not be disclosed to third parties or used even after termination or completion of the Contract. Seller shall protect all forwarded Confidential Information, or any other information it receives from the Buyer, and will return all copies of the Confidential Information to Buyer at the termination of the Contract, or will destroy all copies and provide an affidavit attesting to its destruction.

The previous paragraph does not apply to information that is:

- (1) generally known information, assuming the Seller is not responsible for its undesired dissemination, or knowledge which can be deduced from common knowledge;
- (2) learned by the Seller from a legal source other than the Buyer;
- (3) unintentionally and without malice discovered by the Seller of its own efforts and which the Seller can demonstrate by written or other tangible evidence it rightfully possessed prior to the discovery by the Buyer; or

- (4) learned by Seller from a third party legally and without breaching confidentiality.

Buyer, in addition to Buyer's other rights and remedies, reserves the right to terminate the Contract or any applicable order or service request immediately, without further payment obligations, if, in the discretion of Buyer, Seller has failed to protect the Confidential Information. If Buyer deems that Seller has not properly protected the Confidential Information it may seek compensatory and punitive damages in addition to any other claims it may have in equity or at law and without limitation by the coverages of the insurance.

If the Services or Products provided to Buyer includes the storing or processing of any Confidential Information on a third party server or through a software application provided over the Internet ("Cloud Services"), Seller agrees to provide Buyer with a detailed Type II report on an annual basis generated by an independent auditor in accordance with the Statements on Standards for Attestation Engagements No. 16, or its equivalent, demonstrating that the data security for the Cloud Services meets industry standards ("SSAE 16"). If Seller fails to provide such SSAE 16 or Buyer is not satisfied with the SSAE 16 for any reason, Buyer shall have the right to audit the Cloud Services and, if not satisfied, terminate this Contract immediately and without penalty. Seller shall also obtain Buyer's prior written consent before transferring such Confidential Information to servers located in a country other than the country in which the Buyer is located.

**22 Notice:** Notice given under this Contract shall be effective three business days after posting, postage prepaid, if by mail; the business day after sending if by facsimile (fax), or electronic (e-mail); or at the time of delivery if personally delivered.

**23 Waiver:** Buyer's failure to insist on Seller's strict performance of the terms and conditions of this Contract at any time shall not be construed as Buyer's waiver of Seller's future performance.

**24 Severability/Order of Precedence:** If any provision in this Contract or any related document is held to be invalid or unenforceable, such invalidity shall be limited to the provision affected and shall not impair the validity and enforceability of the remainder of the subject provision or the remaining provisions of this Contract.

This Contract shall take precedence over any invoice, purchase order or other document, unless there is a specific agreement mutually agreed to in writing and executed by authorized representatives of both Parties that specifically covers the order in question, and then this more specific agreement shall take precedence over this Contract.

It is the Seller's responsibility to comply with this and all documents referenced specifically on or in the Contract or related to its performance thereof, and to seek clarification of any potential inconsistencies or conflicts therein. Should Seller fail to contact Buyer to resolve any conflicts or inconsistencies, Seller shall be solely responsible for errors resulting from conflicts or inconsistencies. Where documents are referenced, the version, including any amendments, in effect at the time of order placement shall apply. Acknowledgement of this Contract in writing, or by accepting and fulfilling the Contract, by Seller shall be deemed an acceptance of the terms and conditions herein. No release from this Contract shall be binding on Buyer unless agreed to in writing by Buyer and specifically labeled as a release.

**25 Term and Termination:** This Contract shall continue for the time period stated on the Purchase Order, and if no term is stated, the Contract shall continue until the Products are delivered and accepted, or the Services are performed. Buyer shall have the right to terminate the

Contract or any part thereof at any time for any reason following a prior written notice to Seller to that effect. This Contract shall terminate automatically in the event that Seller is not able to meet its debts as they become due, becomes insolvent, or files for bankruptcy protection.

Any provisions that by their terms should continue after the termination of this Contract shall continue.

Upon receipt of written notice of termination, Seller shall promptly comply with the directions in such notice and shall take action necessary to terminate the work subject to the notice, minimize costs and liabilities for the terminated work; protect, preserve, and deliver in accordance with Buyer's instructions any Property in accordance with the section above titled "Property Furnished to Seller by Buyer." Buyer shall be liable only for payment under the payment provisions of this Contract for Services rendered and/or Products delivered before the effective date of termination.

If Buyer terminates all or part of this Contract for default, Buyer may require Seller to deliver any incomplete Products or Services related to this Contract. Buyer will pay Seller the prorated reasonable cost of such Products or Services.

Payments to Seller hereunder shall be the sole and exclusive remedy available to Seller in the event of a termination by Buyer. Buyer's rights and remedies under this section shall not be exclusive and are in addition to any other rights and remedies provided by law or this Contract.

**26 Time of the Essence:** Time is of the essence in the performance of Seller's obligations hereunder and Buyer is relying upon timely performance by Seller. Buyer's acceptance of Seller's late performance shall not be deemed a waiver of this provision.

**27 Drug and Alcohol Policy:** Seller and all subcontractors or agents providing Products or Services under this Contract at any of Buyer's premises must have a written Drug and Alcohol Policy. Seller and each of its subcontractors, agents or his or her management representative must be able to provide a copy of such a policy to Buyer's representative and describe the procedures used for effective administration of the policy. The policy must prohibit the distribution, use, possession, sale, solicitation for, or being under the influence of, illegal drugs or alcohol by employees and job applicants on a work site and provide for appropriate testing for such substances.

**28 Publicity:** Without Buyer's prior written consent, Seller shall not: advertise, promote, or publish the fact that Buyer has contracted to purchase from Seller; disclose information relating to the Contract (including the existence thereof); or use the name or mark(s) of Buyer or any of its affiliates in advertising, press releases or any other publications or media.

**29 Assignment:** This Contract shall inure to the benefit of and be binding upon the successors and permitted assigns of the Parties hereto. Seller may not assign the Contract without the consent of Buyer which consent shall not be unreasonably withheld.

**30 Language:** The parties hereto acknowledge and confirm that they have requested that this Contract and all notices and communications contemplated hereby be drafted in the English language. Les parties aux présentes reconnaissent et confirment qu'elles ont exigé que la présente convention ainsi que tout avis et communications aux termes des présentes soient rédigés dans la langue anglaise.